

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 7071, and 8587.1 of the Fish and Game Code, and to implement, interpret or make specific sections 1050, 7071, 7850, 7852.2, 7857, 7858, 8043, 8046, 8102, 8496, 8585.5, 8587, 8587.1, 8588, 8589.5, 8589.7, 9001 and 9001.5 of said Code, proposes to amend sections 150, 150.02, 150.03 and 150.05, Title 14, California Code of Regulations, relating to the nearshore fishery restricted access program and deeper nearshore species fishery permit.

Informative Digest/Policy Statement Overview

Current nearshore fishery restricted access regulations include initial permit issuance criteria for transferable Nearshore Fishery Permits (NFP), non-transferable NFPs for 20-year fishermen as required by Fish and Game Code Section 8101, trap endorsements, and Nearshore Fishery Bycatch Permits (NFBP). In addition, current regulations provide regional capacity goals, permit transferability, application fees and renewal deadlines, as well as identifying gears authorized for use in the fishery.

The proposed changes to the nearshore fishery restricted access program regulations would authorize issuance of non-transferable trap endorsements to individuals who both qualify for non-transferable NFPs and meet the qualifying criteria for a trap endorsement. The proposed changes would also remove the requirement for a finfish trap permit, although general trap permits would still be required. Additionally, the proposed changes would clarify language regarding initial issuance criteria for the North Coast Region, clarify status of non-transferable permits when the permit holder dies, place permit applications in the regulations, and allow the Commission to adopt different transfer requirements when a region is at or below the capacity goal. Finally, the proposed changes would align the nearshore bycatch fishery seasons and cumulative trip limits with those used to control the directed fishery.

Authorize non-transferable trap endorsements

Existing regulations prohibit the issuance of trap endorsements to holders of non-transferable NFPs. The proposed regulatory change rectifies that oversight by authorizing issuance of a non-transferable trap endorsement to fishermen with non-transferable NFPs if they meet the trap endorsement criteria for their region. Incorporating finfish trap permittees into the nearshore fishery was one of the goals of the restricted access program. This would allow these individuals to continue fishing in their traditional method.

Remove finfish trap permit requirements

Existing regulations require NFP holders to also possess a finfish trap permit. The proposed regulatory change would exempt NFP holders with trap endorsements from the finfish trap permit requirements (possessing a general trap permit would still be required). This change would be the final step in incorporating finfish trap permittees in the nearshore restricted access program. In addition, it would eliminate the expense of the finfish trap permit fee in addition to the NFP, trap endorsement and general trap permit fees.

Clarify North Coast Region initial permit issuance criteria

Existing regulations describing North Coast Region initial permit issuance criteria do not explicitly state that at least one nearshore landing is required during the qualifying time period (1994 to 1999) to satisfy the qualification criteria. The proposed regulatory change clarifies that requirement. The Department intended that qualifications include at least one nearshore landing from 1994 through 1999 and has interpreted the current regulations that way.

Clarify status of non-transferable permits

Existing regulations provide for transferring a transferable NFP to the estate of a deceased permit holder for the purposes of selling the permit. Those regulations do not directly address the status of non-transferable permits and endorsements under those circumstances. The proposed regulatory change clarifies that all non-transferable permits (NFPs, trap endorsements, and NFBPs) are null and void upon the death of the permit holder. The proposed change would clarify that transferring applies only to transferable permits regardless of the circumstances.

Add permit application references

Existing regulations do not explicitly reference or directly provide applications for a Nearshore Fishery Permit, Nearshore Fishery Trap Endorsement, Nearshore Fishery Bycatch Permit, and Deeper Nearshore Species Fishery Bycatch Permit. The proposed regulations incorporate those applications by reference.

Amend transferability provisions when at capacity goal

Existing regulations describe the process for transferring NFPs and explicitly describe processes to be used for transferring permits when a region is at or below the capacity goal. Those processes may not be feasible when the number of permits have been reduced to that level. The proposed regulatory change would clarify permit transfer processes that are currently applicable and remove the subsection that would guide transfers when a region's permit totals are at or below the capacity goal. This action gives the Commission the opportunity to adopt appropriate transfer options at a later date.

Align commercial seasons and trip limits for all sectors

Existing regulations do not clearly establish that the commercial fishing season and cumulative trip limits, as described in Section 150.06, 150.16, and 189, Title 14, CCR, apply to Nearshore Fishery Bycatch Permit (NFBP) holders. The proposed regulatory change spells this out. This change is necessary so that individuals taking nearshore species under a NFBP are prohibited from taking nearshore fish stocks when the directed fishery is closed. The proposed changes also prohibit NFBP holders from exceeding the cumulative monthly trip limits even if the daily trip limits specified in Section 150.05(d), Title 14, CCR, are not exceeded. Without implementation of the proposed changes, NFBP holders would have greater access to permitted species than would NFP holders.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Long Beach, California, on Friday, February 6, 2004 at 8:30 a.m., or as soon thereafter as the matter may be heard. Please call the Commission office at (916) 653-4899 for the exact location of the meeting. (The Commission

normally adopts its meeting schedule for the upcoming year at its November meeting. Due to the fires in the San Diego area, the Commission had to cancel its November 6-7, 2003 meeting, postponing adoption of the 2004 meeting schedule until December 4. Commission staff has not been able to confirm the exact location of the meeting at the time of submitting this notice.) It is requested that written comments be submitted on or before January 30, 2004 at the address given below, or by fax at (916) 653-5040, or by e mail to FGC@dfg.ca.gov, but must be received no later than February 6, 2004 at the hearing in Long Beach, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. Traci Bishop, Department of Fish and Game, phone (562) 342-7111, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulations seek to clarify language already in place so there would be little change in any business practices.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action is not expected to create or eliminate any jobs or businesses within the State of California.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Robert R. Treanor
Executive Director

Dated: December 9, 2003